availability. The Examiner's reliance on *Walker* at 23:59 through 24:13 and Fig. 19 is misplaced (with respect to claim 121). *Walker* does not teach terminating a flight if there are empty seats, as the Examiner suggests. Instead, *Walker* simply teaches that if a flight is not likely to depart with empty seats, *Walker's* reservation algorithm terminates. *Walker* explicitly declines to reserve seats for any flight that must be filled to capacity. Thus, every one of *Walker's* airplanes will fly.

Claim 120, on the other hand, describes a reservation system that matches an aircraft owner's flight availability with a number of passenger reservation bids and reserves the aircraft for a flight when the reservation system "has matched a number of reservation bids with said flight availability such that [a] minimum total payment requirement is met." Because *Walker* fails to teach this feature, claim 120 is patentable over *Walker*.

Jonas fails to supply what *Walker* lacks. *Jonas* simply explains that in 1999, private aircraft companies, such as AirCharter.com, began to use the Internet to charter private aircraft. *Jonas* describes no feature by which an aircraft is reserved, based on a reservation system matching a number of reservation bids in the manner defined by claim 120. For at least this reason, claim 120 is patentable over *Walker* in view of *Jonas*. Claim 120 therefore should be allowed. For the same reason, Applicant also respectfully submits that independent claims 122 and 124, as well as dependent claims 121, 123, and 125-128, which claim similar subject matter, patentably define the invention over the cited references and should be allowed.

Claim 121 is additionally allowable for the added reason that *Walker* fails to teach terminating a flight availability and refusing passenger reservation bids if the "reservation service fails to match a number of reservation bids with said flight availability such that said minimum total payment requirement is met." As explained above for claim 120, *Walker* does not teach terminating a flight if there are empty seats. Instead, *Walker's* reservation algorithm terminates if, when a flight is first added to *Walker's* flight schedule, it is determined that the flight is not likely to depart with empty seats. *See* Walker at 23:59-24:13. For this added reason, claim 121 is patentable over the cited references and should be allowed.

Additionally, the Examiner has recognized that *Walker* fails to teach or suggest a reservation system for private aircraft. However, the Examiner has asserted that it would have been obvious to one of ordinary skill in the art to include the charter operations described by *Jonas* within *Walker's* conditional purchase offer system in order to achieve the present invention. The motivation for combining these two references, according to the Examiner, would have been to "give customers instant access to thousands of private aircraft carriers." Office Action at 5 (citing *Jonas*, ¶ 1).

Respectfully, the Examiner has overlooked the essential teaching of *Jonas*, which invalidates the *Jonas-Walker* combination and also further highlights one of the reasons why the present invention is patentable. Rather than suggesting that private aircraft owners utilize passenger-oriented reservation systems permitting individual passengers to reserve individual requests to fly from a departure location to an arrival location, *Jonas* instead teaches away from this business model because it reinforces the traditional view that private aircraft are reserved as a single charter. *Jonas* explains that air charter companies, which currently serve "the niche market for corporations," are "going electronic." Jonas, ¶ 1. However, it is apparent from a close reading that *Jonas* is not describing – or even suggesting – that in 1999, private aircraft owners intended to allow individual passengers to submit bids for individual seats on a private aircraft. Instead, *Jonas* merely explains that private aircraft companies, such as AirCharter.com, have begun to use the Internet to make it easier to charter private aircraft according to the old business model. In the present invention, as defined by claim 120, the concept of an aircraft "charter price" is absent. Instead, the focus is on a "payment offer" for an individual passenger – a concept that is entirely missing from *Jonas*.

Before a claim can be rejected for obviousness under 35 U.S.C. § 103(a), not only must the prior art teach or suggest each element of the claim, the prior art must also suggest combining the elements in the manner contemplated by the claim. *See Northern Telecom, Inc. v. Datapoint Corp.*, 908 F.2d 931, 934 (Fed. Cir. 1990); *In re Bond*, 910 F.2d 831, 834 (Fed. Cir. 1990). Although a prior art reference "may be capable of being modified to run the way [an Applicant's invention] is claimed, there must be a suggestion or motivation in the reference to do so." *In re Mills*, 916 F.2d 680 (Fed. Cir. 1990). "There is no suggestion to combine, however, if a reference teaches away from its combination with another source." *Tec Air, Inc. v. Denso Mfg. Michigan Inc.*, 192 F.3d 1353, 1360 (Fed. Cir. 1999) (citing *In re Fine*, 837 F.2d 1071, 1075 (Fed. Cir. 1988)). "A reference may be said to teach away when a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path that was taken by the applicant ... [or] if it suggests that the line of development flowing from the reference's disclosure is unlikely to be productive of the result sought by the applicant." *In re Gurley*, 27 F.3d 551, 553 (Fed. Cir. 1994).

The unmistakable thrust of *Jonas* is that, as of November 1999, private aircraft owners were doing nothing more than beginning to use the Internet to further the traditional business model, in which private aircraft are chartered as indivisible units. *Jonas* does not even hint at the idea that passengers might someday submit personal reservation bids to fly from one place to another, and an intermediary reservation system might match those reservation bids to private

aircraft availability information in order to create a new charter flight for a collection of separately-paying individuals. Because *Jonas* reinforces the traditional charter business model, the *Jonas* "Air Charter" article teaches away from the present invention and thus fails to support the combination suggested by the Examiner.

Conclusion

For the reasons given above, Applicant respectfully submits that claims 120-128 patentably define the invention over *Walker* in view of *Jonas* and should be allowed. A Notice to that effect is earnestly solicited. The Examiner is invited to contact the undersigned at (202) 220-4200 to discuss any aspect of the application.

Respectfully submitted,

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